STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 18, 2013

In the Matter of J. S. FROH, Minor.

No. 313700
Macomb Circuit Court
Family Division
LC No. 12-000308-NA

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent D. Froh appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), and (j). We affirm.

Although the trial court's order references all three statutory grounds, it is clear from the record that the trial court terminated respondent's parental rights only under § 19b(3)(g), and that the other two referenced grounds were intended to apply only to the child's mother, who is not a party to this appeal. In any event, only one statutory ground for termination need be proven, *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002), and the trial court did not clearly err in finding that § 19b(3)(g) was proven by clear and convincing legally admissible evidence. *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008); MCR 3.977(E)(3) and (K).

The child entered foster care at birth. Respondent did nothing to care for the child and initially questioned whether he was the child's father. Even after respondent's paternity was established, he made no effort to attempt to provide care for the child because, as the trial court found, he thought that "foster care seemed like the best thing" and he wanted the mother "to do it all on her own[.]" Even after the mother regained custody, respondent showed little interest in the child. He did not pay any child support and had only seen the child three times. This evidence clearly showed that respondent failed to provide proper care or custody.

The trial court found that respondent's attitude toward parenting throughout the history of the proceedings indicated that he would not be able to provide proper care and custody within a reasonable time. We disagree with respondent's argument that this was improper under the holding in *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009). In that case, the Court held that a parent's failure to take responsibility for a child in foster care is evidence of neglect but does not create a presumption of future neglect when the parent is not notified of the proceedings or provided with the opportunity to be evaluated for placement and to participate in reunification services. *Id.* at 114-117. In this case, there is no claim that respondent was never notified of the proceedings or offered an opportunity to obtain custody. Respondent acknowledged that he was

aware of the proceedings, received notice of the court hearings, and received papers relating to the case. He admittedly ignored the proceedings because he felt that the child was better off in foster care until the mother could regain custody. The mother did regain custody, but then was again incarcerated. When Children's Protective Services contacted respondent, he complained of being harassed. When the mother lost custody a second time, respondent refused to participate in reunification services. Further, respondent never indicated a willingness to participate in reunification services. The evidence showed that he had a possible substance abuse problem, his finances were not sufficient to support himself and his children, and he had no established relationship with the child. This evidence supports the trial court's determination that respondent was unlikely to "be able to provide proper care and custody within a reasonable time considering the child's age."

Respondent also argues that the trial court erred in its evaluation of the child's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

Initially, we note that the trial court applied an incorrect legal standard in its best-interests analysis. The trial court relied on a former version of MCL 712A.19b(5), whereby, once a statutory ground for termination had been established, the court was required to terminate parental rights unless it found "that termination of parental rights to the child is clearly not in the child's best interests." As amended by 2008 PA 199, effective July 11, 2008, the statute now requires that the court affirmatively find that termination is in the child's best interests before it can order termination. However, in addition to stating that it was unable to find that termination of respondent's parental rights was clearly not in the child's best interests, the court went on to also state "I think it is in the child's best interest." Thus, although the trial court erred in relying on the prior version of the statute, its ultimate conclusion that termination was in the child's best interests rendered that error harmless.

Respondent takes issue with the trial court's failure to explicitly address the child's placement with relatives as required by *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), and *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in the child's best interests is to be determined by a preponderance of the evidence standard. *In re Moss*, ___ Mich App ___; ___ NW2d ___ (Docket No. 311610, issued May 9, 2013), slip op at 6. In deciding whether termination is in the child's best interests, the court may consider a wide variety of factors. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "[A] child's placement with relatives weighs against termination" and the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). The relative-placement factor is relevant because a relative caretaker may be open to allowing the parent to maintain a relationship with the child and maintenance of that relationship may be in the child's best interests if the parent and child have a good relationship even though the parent is not a fit custodian. *Id.* at 168-169. "A trial

court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best interests determination and requires reversal." *In re Olive/Metts*, 297 Mich App at 43.

The record shows that the child was placed with respondent's cousin and his wife. A first cousin, or first cousin once removed, and that person's spouse qualify as relatives. MCL 712A.13a(1)(j). Although the record does not disclose the degree to which defendant and his cousin are related, petitioner treated the cousin's home as relative placement. The trial court did not address the child's placement with relatives in its best-interests analysis. While that failure would normally require reversal, *id.*, we conclude that it does not in this particular case. The record indicates that the child was removed from the cousin's home on December 4, 2012, and placed in the home of an unrelated foster parent. The child was still in the nonrelative's home as of March 22, 2013. Because the child is no longer in relative placement, remand for consideration of relative placement is no longer possible. The child's post-termination removal from relative placement renders this issue moot. *Mich Nat'l Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997) (an issue is moot if an event has occurred that renders it impossible for this Court to grant relief).

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause